

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>RONALD J. GENTRY</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos.
<b>STORMONT-VAIL REGIONAL MEDICAL CENTER</b>	)	132,470; 132,471; 135,308
Respondent	)	
AND	)	
	)	
<b>LIBERTY MUTUAL INSURANCE CO.</b>	)	
<b>ST. PAUL FIRE &amp; MARINE INSURANCE CO.</b>	)	
<b>NATIONAL INDEMNITY INSURANCE CO.</b>	)	
<b>FIREMAN'S FUND INSURANCE CO.</b>	)	
<b>AETNA CASUALTY &amp; SURETY CO.</b>	)	
Insurance Carriers	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on May 20, 1999.

**ISSUES**

Claimant contends he suffers from an extensive list of medical problems as a result of exposure to ethylene oxide (EtO) in the course of his employment. The ALJ found claimant failed to meet his burden to show that it is more likely than not his current symptoms are attributable to EtO exposure and denied claimant's request for medical treatment. Whether claimant's symptoms arose out of and in the course of his employment is the only issue on appeal.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes the decision by the ALJ should be affirmed.

Claimant has offered a substantial record, including the depositions of Dr. Jana D. Jones and Dr. Allen J. Parmet, for the purpose of establishing he was injured in the course of his employment by exposure to EtO. The injury includes a collapsed diaphragm, headaches, memory loss, difficulty breathing, dizziness, slurred speech, tremors, and a number of other symptoms. The exposure is essentially undisputed. It occurred as a result of claimant's work with a sterilizer used for surgical instruments that cannot tolerate high temperature. And although respondent disputes the extent of the exposure, the record convincingly establishes the exposure was in excess of now-permissible limits and sufficient to cause some kinds of medical problems. But the exposure was six years before the onset of many of the symptoms. Claimant began working for respondent in 1980 as an electrician and sterilizer repair person. He testified he began having headaches and fatigue in 1982. Respondent removed claimant from the work with the sterilizer in 1986. The last exposure to EtO was in 1989 and the 1989 exposure appears to have been a relatively minor isolated event. Many of claimant's symptoms did not begin until 1995.

The ALJ reviewed the evidence and in this Order provides in careful detail the reasons he concluded the evidence did not meet claimant's burden. The Board agrees the factors cited by the ALJ weigh against claimant's contention. Perhaps the most significant of those factors is the length of time between the exposure and the onset of many of the symptoms. It appears from this record, as found by the ALJ, that claimant was in good health from 1989 to 1995. The evidence suggests that a more typical pattern for symptoms from exposure to EtO is for the symptoms to subside once the exposure ceases and claimant's medical experts were not able to identify any other case where there had been a similar delay in the onset of symptoms.

In spite of the factors mitigating against the claimant's contention, factors cited by the ALJ in his Order, the evidence does, in our view, indicate the medical experts have not been able to find a more probable explanation for claimant's symptoms than the exposure to EtO. With one exception, the opinions offered by respondent simply describe the condition as idiopathic, at least when addressing the paralyzed diaphragm. Even Dr. Jones, one of claimant's experts, occasionally describes the paralyzed diaphragm as idiopathic. Although we acknowledge claimant's experts sometimes make a more certain connection, in our view the gist of the opinions expressed by claimant's experts is that exposure to EtO is the most likely of the possible alternative explanations. But this still does not say how likely it is. Claimant has the burden of proving by a preponderance of the credible evidence that it is more likely than not. This can be a difficult burden when medical science cannot provide a sufficiently certain explanation. This is, nevertheless, the burden placed on claimant. The Board agrees with the ALJ that claimant has not, on the current state of the evidence, met that burden.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on May 20, 1999, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1999.

---

BOARD MEMBER

- c: John J. Bryan, Topeka, KS  
James C. Wright, Topeka, KS  
D'Ambra M. Howard, Overland Park, KS  
Ronald J. Laskowski, Topeka, KS  
Clifford K. Stubbs, Lenexa, KS  
John F. Carpinelli, Topeka, KS  
James B. Biggs, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director